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VIDEO SOFTWARE DEALERS ASSOCIATION
11 and ENTERTAINMENT SOFTWARE ASSOCIATION

12
13 UNITED STATES DISTRICT COURT

14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15
16 VIDEO SOFTWARE DEALERS
ASSOCIATION and ENTERTAINMENT
17 SOFTWARE ASSOCIATION,

18 Plaintiffs,

19 v.

20 ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of the State of California;
21 BILL LOCKYER, in his official capacity as
Attorney General of the State of California;
22 GEORGE KENNEDY, in his official capacity as
Santa Clara County District Attorney, RICHARD
23 DOYLE, in his official capacity as City Attorney
for the City of San Jose, and ANN MILLER
24 RAVEL, in her official capacity as County
Counsel for the County of Santa Clara,

25 Defendants.

26 CASE NO. C 05 4188

27 DECLARATION OF TED C. PRICE
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIDEO SOFTWARE DEALERS
ASSOCIATION and ENTERTAINMENT
SOFTWARE ASSOCIATION,

C.A. 05-4188

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, in his official capacity as Governor of the State of California; BILL LOCKYER, in his official capacity as Attorney General of the State of California; GEORGE KENNEDY, in his official capacity as Santa Clara County District Attorney, RICHARD DOYLE, in his official capacity as City Attorney for the City of San Jose, and ANN MILLER RAVEL, in her official capacity as County Counsel for the County of Santa Clara,

Defendants.

DECLARATION OF TED C. PRICE

Pursuant to 28 U.S.C. § 1746, I, Ted C. Price, under penalty of perjury state as follows:

1. I am the President and CEO of Insomniac Games, Inc. and have served in this capacity since I founded the company in 1994. My duties outside of those regularly associated with running a company include directly overseeing creation and development of video games for the Playstation game console, Playstation 2 game console and the Playstation 3 game console.

2. Insomniac Games is headquartered in Burbank, California and is an independent video game developer employing approximately 150 people. Over the past

11 years Insomniac has created and developed games for the Playstation game console and the Playstation 2 game console, most notably the *Spyro the Dragon* series on the Playstation and the *Ratchet and Clank* series on Playstation 2. The games Insomniac has created have sold close to 19 million copies worldwide to date. The company is currently developing another *Ratchet* video game for the Playstation 2 to be released in 2005 and an untitled Playstation 3 video game to be released in 2006.

3. Even though I am President and CEO of Insomniac, I am heavily involved in the design of our games, serving as creative director and executive producer for most of our titles. I am also the chairman of the Academy of Interactive Arts and Sciences (“AIAS”) which was founded to recognize artistic and technical excellence in computer and video games. This excellence is recognized at the Interactive Achievement Awards hosted every year by the AIAS. This event is roughly the equivalent of its counterparts in the motion picture , television and recording industries. These peer-based awards are given in a wide variety of categories, some based on game content and others on craft (such as Outstanding Achievement in Sound/Music and Outstanding Achievement in Character or Story Development.)

4. The Academy and other organizations within the video game industry like the International Game Developers Association (“IGDA”) of which I am also a member, serve to remind people that computer and video games constitute artistic expression. Today’s video games have storylines, characters, art, animation, sound effects and music that rival motion pictures and other forms of entertainment in terms of quality and complexity. As do movie directors and book authors, game creators not only strive to entertain their audiences but to communicate messages and ideas including a variety of

political, social and moral commentary. For example, *Tom Clancy's Rainbow Six 3*, a game discussed in this declaration, communicates the same patriotic ideals and outlook on US national security put forth in Tom Clancy's novel *Rainbow Six*.

5. Because of my current positions and because of my experience as an active member of the video gaming community I have extensive knowledge of the video game industry including knowledge of how computer and video games are developed, published and distributed. Throughout my life I have also been an avid player of computer and video games. In my lifetime I estimate that I have played over 1,000 computer and video games and that I have spent thousands of hours playing computer and video games. I am familiar with the design, storylines, character development, and expressive elements of a wide range of computer and video games. In particular, I am familiar with the following games, which I understand have been submitted to the Court along with a videotape of representative game play:

Medal of Honor: Frontline

Resident Evil 4

Jade Empire

God of War

Full Spectrum Warrior

Tom Clancy's Rainbow Six 3

THE STATUTE

6. On October 7, 2005 California enacted into law Chapter 638, Statutes of 2005 (Ca. 2005) (the "Act"). The law is due to take effect on January 1, 2006.

7. I have reviewed the Act, including the Act's restrictions on "violent video games," and the numerous terms used by the Act to attempt to define what games are covered. The overall definition is so ambiguous that video game creators will have a very difficult time understanding what is and what isn't permitted under the law. Many of today's games rated T by the Entertainment Software Rating Board ("ESRB") might be interpreted to fall under these ambiguous terms including *Medal of Honor: Frontline*, a game named in this declaration.

8. A general problem with the definition of "violent video games" is that it is inclusive but not exclusive, as it uses the word "includes" to modify the specific examples of behavior covered by the definition. Thus, the definition is left open-ended and does not confine the range of depictions that trigger the "violent video game" label. As a result, game creators are put in a position where they are being asked to work within boundaries that have not been clearly defined. For example, in some games it is possible to inflict "harm" on characters other than "killing, maiming, dismembering, or sexually assaulting," and it is unclear how this would be treated under the Act.

9. "Violent video games" are defined by the Act to include those games that appeal to the "deviant or morbid interest of minors". This term creates confusion because there is no common or accepted understanding of this term, and game creators and others will not be able to know at what point an interest becomes "morbid" or "deviant". It is particularly difficult to understand what constitutes "a deviant or morbid interest" because each individual is unique in his or her level of interest in any topic.

10. The Act further defines "violent video games" to include games that "enabl[e] the player to virtually inflict serious injury upon images of human beings or

characters with substantially human characteristics in a manner which is especially heinous, cruel, or depraved in that it involves torture or serious physical abuse to the victim.” Many of these terms, even those that are further defined by the Act, are extremely ambiguous and cannot be easily applied, particularly in the video games context, in which the characters are not actual beings.

11. For example, the Act covers serious virtual injuries to “images of human beings or characters with substantially human characteristics.” It will be impossible for individuals to apply this term consistently to many of today’s games. Many games feature characters that are humanoid – for example, zombies, mythological creatures, mutants, and humanoids that transform into other beings. Other games feature characters that appear to be human but possess magical or other powers that humans do not possess. People are certain to reach differing and conflicting conclusions about whether certain games include injuries to “images of human beings” or to “characters with substantially human characteristics.”

12. The Act defines “cruel” as “that the player intends to virtually inflict a high degree of pain by torture or serious physical abuse of the victim in addition to killing the victim.” It is unclear what is covered by this definition of “cruel.” In most games, whether rated E, E10+, T or M, players often engage in physical combat with virtual characters. For instance most so-called “fighting games”, almost all of which are rated T, feature locks, holds, arm and leg breaks, or strikes that could be considered to involve “inflict[ing] a high degree of pain,” and therefore “cruel” especially if and when an opponent is dazed or stunned. In addition, this definition of “cruel” relies on whether the player “intends to virtually inflict a high degree of pain.” It is impossible to know what

individual players of a game “intend” while playing the game. Game developers are left to guess whether their games will be viewed as “cruel,” and may have to restrict their content because this term can be so widely interpreted.

13. The Act defines “depraved” as “that the player relishes the virtual killing or shows indifference to the suffering of the victim, as evidenced by torture or serious physical abuse of the victim.” This definition contains terms that are not capable of clear application, particularly in the video game context in which no real harm is ever inflicted, such as “relishes the virtual killing” or “shows indifference to the suffering of the victim.” Many T-rated games, such as *Medal of Honor: Frontline*, feature combat in which characters may be killed by one blow or many. Game creators will be left guessing as to how many blows to an enemy will mean that a player “relishes the virtual killing or shows indifference to the suffering of the victim.” Furthermore, many of today’s games allow players to take very different approaches to succeeding. Some players may choose to confront enemies in combat with as much force as possible, whereas other players may choose to take a stealthy approach and avoid confrontation if at all possible. Because game designers often seek to allow players freedom in choosing their own unique paths through games, it would be impossible to predict how frequently, if at all, individual players “relish the virtual killing” or “show indifference to the suffering of the victim.” This makes the term “depraved” even more difficult to apply to video games.

14. The Act defines “heinous” as “shockingly atrocious. For the killing depicted in a video game to be heinous, it must involve additional acts of torture or serious physical abuse of the victim as set apart from other killings.” In addition to the other definitional problems that I describe in this declaration, it is unclear what is covered

by the definition's use of the subjective term "shockingly atrocious." Game creators cannot know in advance whether their content will be considered – by retailers, consumers, or state authorities – to be "shockingly atrocious." This uncertainty may cause game creators to restrict their expression to steer clear of violating the Act.

15. Another ambiguous part of the Act is the definition of "serious physical abuse," which the Act defines as "a significant or considerable amount of injury or damage to the victim's body which involves a substantial risk of death, unconsciousness, extreme physical pain, substantial disfigurement, or substantial impairment of the function of a bodily member, organ, or mental faculty. Serious physical abuse, unlike torture, does not require that the victim be conscious of the abuse at the time it is inflicted. However, the player must specifically intend the abuse apart from the killing."

The definition of "serious physical abuse" raises more questions than it answers, due to the use of ambiguous terms such as "significant or considerable amount of injury or damage," "substantial risk of death," "extreme physical pain," "substantial disfigurement," and "substantial impairment." In addition, this definition does not readily apply to the video games context, in which the characters are not real and thus are not susceptible of "damage," "risk," and "impairment" in functioning in the way that actual, real-world beings are. It will thus be difficult or impossible to determine if virtual characters meet the descriptions involved in this definition. For example, how can the state of a virtual character's consciousness be determined, particularly because that character was never actually conscious to begin with? The problems with this definition of "serious physical abuse" are increased by requiring that the player "specifically intend the abuse." It is impossible to know what individual players of a game "intend" while

playing the game. Game developers will thus be left to guess whether their games will be viewed involving “serious physical abuse,” and may restrict their content because this term can be so widely interpreted.

16. The Act also includes a vague definition of “torture,” to include “mental as well as physical abuse of the victim. In either case, the virtual victim must be conscious of the abuse at the time it is inflicted; and the player must specifically intend to virtually inflict severe mental or physical pain or suffering upon the victim, apart from killing the victim.” This definition suffers from the same vague and confusing language as used to define “serious physical abuse,” as it requires an impossible determination of whether virtual victims are “conscious” and whether a player acts with “specific intent.” Similarly, it will be difficult, if not impossible, to determine whether virtual victims have suffered “severe mental or physical pain or suffering,” not only because that phrase is vague and capable of broad application, but also because video game characters are not real and thus are not capable of suffering as real beings are.

17. Finally, the Act states that “[p]ertinent factors in determining whether a killing depicted in a video game is especially heinous, cruel, or depraved include infliction of gratuitous violence upon the victim beyond that necessary to commit the killing, needless mutilation of the victim’s body, and helplessness of the victim.” This provision contributes further to the confusion that the Act will create. The terms “gratuitous violence,” “needless mutilation,” and “helplessness of the victim” are themselves subjective and unclear, and there is no way to predict how these terms will be applied. In addition, and as noted above, many of today’s video games allow players to take very different approaches to succeeding. Players often can choose whether to inflict

multiple blows, a single blow, or no blow at all to get past an enemy. Because many game designers creates games in which players are free to choose their own paths, it would be impossible to predict how frequently, if at all, individual players commit “gratuitous violence” and “needless mutilation.” Because this provision has no ready meaning in the video game context, it is likely to cause me and other game creators to alter our creative choices in order to avoid the risk of falling within the Act’s terms.

18. My concern as a game developer is that there is no predictable or settled interpretation of the ambiguous definitions in this Act. This means that the games my company and I create could be considered covered by this Act. If we have no way of truly understanding how people will apply these terms, it is very difficult for us to freely design games without fearing that the statute will apply to our games.

19. As a result of the ambiguous nature of the definitions within this Act and the fact they can be so widely interpreted, I believe that this Act will result in many games rated by the ESRB as potentially suitable for teenagers and children being considered “violent video games”. Indeed, the definition if applied broadly would cover many video games presently available for commercial sale or rental, including games rated “T”. For example I believe the following games may fall under the provisions of this statute: *Terminator 3: The Redemption* (T), *Minority Report* (T) and *Medal of Honor: Frontline* (T).

20. As a game developer, I worry that because the government can fine individuals for misinterpreting the Act, retailers, distributors, and publishers will act extremely conservatively to avoid being fined. For many games this will result in a decreased demand at retail. The reduced demand is likely to create a domino effect where

distributors choose not to distribute certain categories of games and publishers respond by curtailing development of games that may possibly fall under the Act's prohibitions. This will require that game developers and creators alter and/or restrict their creative expression within the games they make.

21. From my perspective as a game designer and developer, I feel that this Act severely infringes on the rights of every developer in my company to freely express him or herself under the First Amendment of the U.S. Constitution. Government-mandated fines for ambiguously defined "violent video games" will mean that our designers will have to restrict the kinds of storylines and gameplay we include in our games. This is a restriction not shared by any other entertainment medium.

22. Furthermore, this Act creates an incredibly negative and unwarranted stigma for games which feature violence *less* graphic than seen in today's feature films and other media. Not only does this Act create a double standard for a creative medium equivalent in relevance to film, books and television, but it clearly ignores the artistic merit, relevance and sophistication of today's video games by essentially treating an ambiguously defined subset of games similarly to pornography and controlled substances such as alcohol and cigarettes.

POTENTIAL APPLICATION OF THE ACT TO SPECIFIC GAMES

Medal of Honor: Frontline

23. *Medal of Honor: Frontline* is a video game developed and published by Electronic Arts. The ESRB gave *Medal of Honor: Frontline* a rating of "Teen" or "T", meaning that it may be suitable for ages 13 and older. Electronic Arts publishes the game

for Microsoft's Xbox console, Sony's Playstation 2 console, Nintendo's Gamecube control.

24. This game puts the player in the shoes of Lieutenant James Patterson, a transport pilot turned soldier. Patterson is a part of the American forces landing in Normandy on D-Day during World War II.

25. The game begins with a harrowing segment where Patterson must survive the Normandy landing and help his fellow soldiers gain control of the beach and surrounding areas. This opening sequence in the game is very similar to the opening scene of *Saving Private Ryan* except that the player is actually playing through the scene, running across the sand, taking cover and eventually storming the bunkers occupied by German soldiers.

26. After the Normandy landing, Patterson is enlisted in the intelligence gathering efforts of the Office of Strategic Services (OSS). He is sent on reconnaissance missions and eventually tasked with destroying a U-boat shipyard. During this particular mission Patterson recovers secret German documents, one of which outlines German plans for an experimental jet bomber. The OSS determines that if the Nazis successfully construct the bomber, the tide of war will turn against the Allies.

27. Patterson is then sent into an occupied town to meet with an informant who helps locate the head of the bomber project, a Nazi Baron. Patterson finds the Baron aboard a train which he learns later is destined for the bomber facility. But when Patterson confronts the Baron, the Baron manages to escape. Now knowing the location of the bomber construction facility Patterson must make his way to the district of Gotha.

28. Patterson infiltrates the aircraft research facility in Gotha. Once he locates the bomber he calls in an allied airstrike. But again, he must face the Baron and his soldiers. Patterson ultimately defeats the Baron and escapes with the bomber, thus ensuring it will never be used against Allied targets.

29. It is very difficult to attempt to apply the Act's ambiguous terms, such as "intends to virtually inflict a high degree of pain" and "gratuitous violence," to this game. Every player approaches the combat scenarios in the game differently. As a result, some players would experience violent acts much less frequently than others, and players will vary in the amount of violence they use to accomplish their objectives. Which player experiences would be used to apply the Act's vague metrics?

Resident Evil 4

30. *Resident Evil 4* is a video game developed by Capcom Production Studio 4 and published by Capcom. The ESRB gave *Resident Evil 4* a rating of "Mature" or "M", meaning that it may be suitable for ages 17 and older. Capcom publishes the game for Nintendo's Gamecube.

31. *Resident Evil 4* continues a saga begun in earlier *Resident Evil* games. In previous games a sinister corporation called Umbrella had manufactured a virus which turned humans into zombies and mutants. We learn in the beginning of *Resident Evil 4* that the United States government has issued a suspension decree to Umbrella, crashing its stock and driving it out of business.

32. The main character in the game is a government agent named Leon Kennedy. At the start of the game he is tasked with rescuing Ashley, the kidnapped

daughter of the American president. Leon follows clues to a small rural village in Spain and begins his search.

33. To summarize: the player eventually discovers that a character named Osmund Saddler has discovered an ancient parasite called La Plagas. This parasite when injected into humans will turn them into zombies or transform them into even more vicious and powerful monsters. The catch is that Saddler, himself a mutant, can exert his will over those that are infected and use them for his own nefarious purposes. Saddler himself has not kidnapped Ashley, rather an old enemy of Leon's has kidnapped her to curry favor with Saddler so that *he* can steal Las Plagas (an attempt which is later thwarted). Saddler's intent is to use Ashley to extort money from the United States government. But this is not the main focus of Saddler's actions as the player will later find out.

34. Several hours into the game, the player rescues Ashley but his attempts to return her to the United States are hindered by Saddler and his army of zombies and mutants. The player, while doing his best to protect Ashley uncovers more and more layers of Saddler's complex scheme to manufacture and spread Las Plagas for his own personal gain. Before he is able to return Ashley to the United States Leon must confront and kill Saddler. When the player confronts Saddler in a climactic battle Saddler transforms into a monstrous being – something that in no way resembles a human. On the player's victory the main games ends and Leon returns Ashley to the United States.

35. Throughout the game, the player is constantly subjected to plot twists, mysteries to be solved and evolving relationships between the main characters. While the

game is linear (in that there is no branching storyline) the player has to solve puzzles and manage a complex inventory to have any hope of succeeding.

36. The player's character *may* be interpreted as injuring and killing "images of human beings" or "characters with substantially human characteristics," though that is not clear. The majority of the enemies in the game are zombies and mutants infected by Las Plagas. These characters have corpses which dissolve a few seconds after dropping to the ground. There are a few instances where there appear to be chainsaw-wielding humans whose corpses do not disappear. Their heads are completely covered by canvas sacks making it impossible to tell what they really are. There are also what appear to be humans who attack the player at various points of the game who also have corpses that do not disappear. But they act and look exactly like the zombies and mutants who populate most of the game's areas. The inference is that these people have also been infected by Las Plagas and are in the process of becoming full-fledged zombies but that the infection is not far enough along to have fully converted them.

37. While some players may be able to avoid confrontation with most of the enemies in this game, other players will succeed through killing the majority of the zombies and mutants he or she encounters. Yet enemy encounters do not happen consistently – there are frequent stretches of exploration in between combat sequences. Because players may play through the game at different speeds and have different styles of play, it would be impossible to determine if players are engaging in acts of violence that would be covered by the Act's various definitions of "violent video games," such as whether "the player relishes the virtual killing or shows indifference to the suffering of the victim," or "appeals to the deviant or morbid interest of minors."

Jade Empire

38. *Jade Empire* is a video game developed by Bioware Corporation and published by Microsoft Corporation. The ESRB gave *Jade Empire* a rating of “Mature” or “M”, meaning that it may be suitable for ages 17 and older. Microsoft publishes the game for its Xbox console.

39. The story of *Jade Empire* is complex and has different paths which the player may choose to follow. There are many opportunities in the game for the player to choose between good, neutral and evil actions that will change the course of the story, change the way other characters in the game react to the player’s character and change the items and skills available to the player.

40. The story itself is heavily influenced by Chinese mythology and wuxia (martial-chivalric stories). It takes place in a mythical kingdom called the Jade Empire which is ruled by Emperor Sun and his younger brothers Prince Li and Prince Kin. Before the game begins the kingdom suffers a terrible drought and the Emperor, seeking to end the drought obtains the heart of the Water Dragon, Goddess of Life. For whoever possesses the heart of the Water Dragon gains immense power and becomes immortal. While the Emperor indeed ends the drought he is corrupted by the power he has obtained and decides to become a god. His brothers Li and Kin attempt to stop him but the Emperor is too powerful. He turns Kin into a demonic slave named Death’s Hand while Li flees and travels to the edge of the empire disguising himself as a benevolent martial arts master.

41. With the Goddess of Life unable to function, the gates to the underworld are closed preventing the spirits of the dead from being reincarnated in the afterlife. The

empire begins to fill with the spirits of the dead (ghosts) who begin to go mad and attack the living. Even worse, to further strengthen his hold on the land, Emperor Sun builds an army of immortal golems powered by the enslaved souls of the dead.

42. The player's character begins as a student of Prince Li, now disguised as Master Li. Master Li trains the player to fight the spirits, bandits and demons and enlists the player in his own evil quest to steal the heart of the Water Dragon from his brother, though the player doesn't realize it at first. Throughout the game the player's character develops new skills, acquires many new items, gains followers and uncovers more and more of the back story. Much of what the player learns and acquires is a result of thousands of choices he must make throughout his travels. But ultimately he ends up battling and defeating Emperor Sun near the end of the game.

43. When the Emperor falls, Master Li obtains the heart of the Water Dragon and inherits its immense powers. Unfortunately for the player it is at this point that he discovers Master Li is just as evil as his brother. Master Li kills the player's character sending him to the spirit realm as a ghost. When the player wakes up in the spirit realm he finds that to return to the land of the living he must first unlock the gates to the Underworld. Eventually after a series of adventures as a spirit the player does return as a mortal and has a final showdown with Master Li, now Emperor Li. When the player defeats the new Emperor he has two choices – one to rule the world with the evil Emperor the other to restore the world to a balanced state.

44. During the game the player's character fights and kills human bandits, ghosts, humanoid golems and demons of all types – some humanoid, some animal-like. The player himself becomes a spirit three quarters of the way through the game.

Furthermore, since many of the humans in the game use magic spells, magical fighting abilities and even transform into other creatures, it is unclear whether this game involves “harm” to “images of human beings” or to “characters with substantially human characteristics.”

45. This game also features long stretches of exploration and many instances of exposition where the player is learning about the background of the land and the other characters. Depending on a player’s style of play, combat may occur frequently or infrequently, and combat may vary in its intensity. In other words, the player may choose to avoid some combat sequences or jump into every confrontation. Because of this open-ended game design it would be impossible to determine whether or not the game satisfies the Act’s vague definitions of “violent video games,” such as whether a player “specifically intend[s]” to inflict “serious physical abuse,” including “extreme physical pain” and “substantial impairment of the function of a bodily member, organ, or mental faculty.”

God of War

46. *God of War* is a video game developed and published by Sony Computer Entertainment America. The ESRB gave *God of War* a rating of “Mature” or “M”, meaning that it may be suitable for ages 17 and older. Sony Computer Entertainment America publishes the game for Sony’s Playstation 2 game console.

47. *God of War* takes place in ancient Greece. In this game the Greek gods of legend are real and interact with humans. The player’s character is Kratos, a Spartan warrior who has taken on the task to kill the titular *God of War* Ares by opening

Pandora's box. Along the way, he is provided assistance by Athena, Zeus, Artemis, Poseidon and Hades.

48. At the beginning of the game in a foreshadowing of future events, the player sees Kratos hurling himself off of a cliff for unknown reasons. Time shifts to three weeks before this event and a complex story unfolds in a non-linear fashion. The player finds out bits and pieces of Kratos' history through movies which play at the end of most game play segments.

49. The player eventually learns that Kratos at one time was a brutal but effective Spartan commander. Ignoring his wife and child, he led his army on countless conquests until he met his match against a barbarian army which was threatening Sparta itself. Kratos' army was being badly defeated until he called on the god Ares for help. Ares arrived and helped Kratos. Seizing an opportunity to gain greater power Kratos and his army began to serve the will of Ares. Under orders from Ares, Kratos and his army attacked a small village. Kratos and his men slaughtered all of the villagers but to his horror, Kratos realized that two of the victims of his rampage were his own wife and daughter. After this Kratos rejected Ares and vowed to seek forgiveness from the other gods for his crimes as well as to exact revenge on Ares for his deception.

50. We learn all of this in flashbacks throughout the game. But as the player begins his actual quests, we see Kratos struggling with his inner demons. In many of the game's movies, Kratos is plagued by nightmares of his wife and child's deaths and nothing he does will erase their memories. Because of this he becomes singularly focused on eliminating Ares in the hopes of convincing the goddess Athena to aid him. During the game the player fights countless demons and other humanoid creatures who are

terrorizing the human populace as he seeks revenge on Ares. He battles through ancient Athens and even journeys to Hades in his quest.

51. When Kratos finally succeeds in killing Ares it is a hollow victory. We learn that Athens will be rebuilt but that Kratos' nightmares will never cease. At this point, in the post-battle movies Kratos climbs a massive cliff and jumps to his death, bringing the story full circle to the beginning of the game. But the story doesn't end with Kratos' death. Athena rescues Kratos and offers him god status and the throne of Ares. Kratos accepts and also finds out that he is actually the son of Zeus.

52. Throughout the game, the Kratos executes combinations of physical attacks and magical attacks against enemies. While the game is primarily focused on combat, the player's character has an opportunity to find special items which increase his maximum health and magic. The game requires well thought out strategies in terms of using different combinations of physical and magical attacks effectively. Furthermore, the game is filled with logic puzzles which demand that players observe their environments carefully and experiment with different ways to traverse the environments. These logic puzzles generally do not involve combat and are non-violent.

53. Many characters in this game *resemble* humans but it is unclear whether they will be interpreted to be "images of human beings" or to "characters with substantially human characteristics." Most characters are derived from Greek mythology. For instance, many of the characters in the game are well known gods or persona from Greek mythology who look like humans but are immortal or have god-like powers. Furthermore, some enemies have humanoid bodies with wings, some are shuffling zombies, others are skeletal warriors.

54. While combat occurs with regularity in this game, people will likely disagree whether the game content satisfies the Act's many definitions of "violent video games," such as "shockingly atrocious" or involving a player's specific intent "to virtually inflict severe mental or physical pain or suffering upon the victim." There are many story sequences and traversal segments that help to create a variety of challenges and to flesh out Kratos' tragic tale. As a result, it is very difficult to know whether or not this game would satisfy anyone's interpretation of the Act's definitions.

Full Spectrum Warrior

55. *Full Spectrum Warrior* is a video game developed by Pandemic Studios and published by THQ Corporation. The ESRB gave *Full Spectrum Warrior* a rating of "Mature" or "M", meaning that it may be suitable for ages 17 and older. THQ publishes the game for Microsoft's Xbox console, Sony's Playstation 2 and personal computers.

56. The game follows three squads of infantry troops through a series of mission fighting insurgents in a fictitious Middle Eastern city called Zekistan. Each squad has four members, a team leader, a rifleman, a grenadier and an automatic rifleman. These squads are not faceless soldiers - they have real personalities that emerge in their verbal responses to orders and in their repartee with each other. The squads work as a unit, covering each other, moving in formation.

57. As a player you never take the place of any of the soldiers in combat. Instead you are a virtual commander giving your squads orders to move, take cover, provide covering fire and then fire on positions. The player gives commands to his squads and the squads carry them out. The main focus of the game is on coordinating

squads in an attempt to safely find the most strategic cover, outflank, and then defeat enemies.

58. There is a comprehensive training level at the beginning of the game which familiarizes players with necessary terms and tactics. Throughout the game, players are faced with more and more complex situations and must develop their abilities to command their squads effectively and choose the strategies that will minimize allied casualties. Furthermore, the player has to be aware of the different capabilities of each of his squad members and use them at the correct times. For instance, if a squad is pinned down by heavy enemy fire, the player can command his team leader to drop smoke grenades for a screen and then have his automatic rifleman provide covering fire while the team moves to a safer position, one by one.

59. The combat sequences in this game are spaced fairly far apart from each other and players are not forced to move quickly into each scenario, though they may if they wish. In addition, much of the game involves setting up squads in flanking positions, scouting areas for potential threats and then, when in combat, responding in a measured, strategic fashion. Acting with disregard for one's troops' safety will result in allied casualties and ultimately cause the player to lose the game. It is therefore impossible to determine whether any particular player will engage in the "violence" described by the Act's various definitions of "violent video games," such as "serious physical abuse" performed with specific intent.

Tom Clancy's Rainbow Six 3

60. Tom Clancy's *Rainbow Six 3* is a video game developed by Ubisoft Montreal and published by Ubisoft. The ESRB gave *Rainbow Six 3* a rating of "Mature"

or “M”, meaning that it may be suitable for ages 17 and older. Ubisoft publishes the game for Microsoft’s Xbox console, Sony’s Playstation 2, Nintendo’s Gamecube, and mobile phones.

61. The story in *Rainbow Six 3* is related to that of the book *Rainbow Six* by Tom Clancy. In fact, the game’s storyline was approved by Tom Clancy himself. In the game, as in the book, Rainbow Six is a shadow organization covertly supported by western governments. It is a secret anti-terrorist organization comprised mainly of American ex-special forces soldiers mixed with a few specialists from other nations. In the game, the player assumes the role of team leader, Ding Chavez, and gives orders to the rest of Chavez’s four person squad.

62. The game takes place in 2007 as OPEC launches an oil embargo against the United States. But Venezuela breaks the embargo and begins shipping oil to the United States. Terrorists who have apparently been counting on the embargo to weaken America’s influence in the Middle East begin striking targets in America, South America and Europe. Rainbow Six is called in by the United Nations to stop the terrorists.

63. Juan Crespo, a Venezuelan philanthropist and pro- United States businessman bound for the presidency of Venezuela becomes the apparent target of the terrorists and the player’s character must rescue him or his associates during two of the games’ fourteen missions. Later in the game Crespo is elected president of Venezuela and we discover that he is actually behind the terrorist activities around the world. The player finds out that once Crespo became president, he had planned to stop the oil shipments to the United States and sell it on the black market, generating huge personal profits. Furthermore through his connections in the Middle East Crespo intended to cast the

blame for the terrorist attacks on Saudi Arabia creating a war between the United States and the Saudis. Assuming that the war would devastate one or both countries, Venezuela, a major oil producer, would become even more powerful. During the later missions in the game, the player and his team must continue to disrupt the terrorist activities, and track down and then kill Crespo.

64. *Rainbow Six 3* is a realistic tactical simulation in that the player has to think through each situation to succeed. Because team members can be killed or incapacitated by a single bullet, they cannot simply run into a room with guns blazing (unless the player has no interest in winning the game). The player must command his team members to covertly move to locations, open doors with varying levels of aggressiveness, and secure hostages among other things, by either using the command system accessed through the joypad or by simply issuing verbal commands into a headset. The commands used are fairly complex and usually include a series of orders which must be executed in sequence such as “open, flash and clear.” This means “open the door, deploy a flash grenade and clear the room of hostiles.” Since many of the situations presented to the player involve rooms or areas with multiple entrances, to be effective the player has to make sure that all team members are acting in concert – bursting in from different directions simultaneously to gain the advantage of surprise.

65. While many of the missions do involve killing or incapacitating terrorists, the objectives of the missions themselves are varied. Most of the missions have hostage rescue as the main goal. In these missions, killing a hostage or allowing a hostage to be killed will cause the player to fail. Other missions involve defusing bombs or preventing nerve gas from being deployed. Losing team members during missions makes the game

even more difficult so players have to be very careful to protect their squad mates by collecting as much data as possible about their surroundings and issuing intelligent commands.

66. Depending on the skill of the player and the choices that the player makes, he may engage in violent acts frequently or infrequently, and with varying amounts of force. Players often have the choice to either incapacitate or kill enemies. For example, with the right equipment and tactics, skilled players may be able to succeed in the game by terminating only a handful of terrorists with minimal force. For this reason, like previous games mentioned, the Act's vague definitions of "violent video games" (such as "gratuitous violence" and "intends to virtually inflict a high degree of pain") are impossible to apply to this game, particularly because every player has a different experience and makes different choices as he or she plays through the game.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on October 18, 2005.



Ted C. Price

